

INITIAL STATEMENT OF REASONS
“IMPLEMENTATION OF PENAL CODE § 3000.1”

California Code of Regulations, Title 15, § 2275

IMPLEMENTATION OF PENAL CODE § 3000.1

RN 06-02

CIRCUMSTANCES THAT THIS REGULATORY ADOPTION IS INTENDED TO ADDRESS

Government Code § 12838.4 vests the Board of Parole Hearings with all the powers, duties, responsibilities, obligations, liabilities, and jurisdiction of the Board of Prison Terms, Narcotic Addict Evaluation Authority, and Youthful Offender Parole Board, which no longer exist.

Penal Code (PC) § 3052 vests with the Board the authority to establish and enforce rules and regulations under which prisoners committed to state prisons may be allowed to go upon parole outside of prison when eligible for parole.

PC § 5076.2 authorizes the Board to promulgate, maintain, publish, and make available to the general public a compendium of its rules and regulations.

Neither the penal code nor the Board’s existing regulations are sufficient to establish uniform rules for the conduct of the hearings required under PC § 3000.1(d). Timely uniform rules will afford these persons due process of law while protecting the public by reducing the likelihood of court-ordered releases of dangerous persons into the community as remedies for late or disparate hearings. Thus, the proposed regulation explains the nature and reasons for these special hearings, defines the panel necessary to conduct these hearings, as well as clarifying the release criteria and decisional options available to the hearing panel.

NECESSITY FOR THE PROPOSED NEW PROVISIONS

Section 2275(a). General.

This provides notice describing which persons are subject to the special hearings specified under PC § 3000.1(d). See attached text of the statute. Although this provision duplicates certain portions of the statute, it is necessary to give persons reading the regulation some context “setting the stage” for the other provisions of the regulation.

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Section 2275(b). Panel.

This section implements and makes specific the statute by identifying the composition of the hearing panel. No statute specifies the composition of board hearing panels generally. The Board considered other types of hearings where the panel was statutorily specified and compared the gravity of the consequences of the hearing panel decision. For example, PC § 3063.6 provides that parole revocation hearings may be conducted by a panel of one person. PC § 2041 provides that the panel for life prisoner suitability hearings is two or three commissioners, one of which may be a deputy commissioner.

The special PC 3000.1 hearings contain elements of both (1) the dispositional phase of a parole revocation hearing and (2) the annual life prisoner suitability hearing consequence if release is not ordered within one year of the revocation offense. Since release of a life prisoner, whether or not they were recently on parole, is a matter of serious consequence affecting public safety, the Board decided to require a two commissioner panel, one of which shall be a deputy commissioner.

Section 2275. Disposition.

This section spells out the disposition options available to the hearing panel. Although it repeats information from the relevant statute, doing so is reasonably necessary since otherwise staff and the directly affected public—prisoners and parolees—will likely seek to apply other portions of the Board’s regulations and thus make faulty decisions. Specifically it makes clear that the multi-year denials provided in PC section 3041.5(b)(2) are not permissible and that the two permissible options are release within one year of the date of parole revocation or schedule for an annual parole consideration hearing.

Authority and Reference notes:

This regulation is submitted pursuant to the Board’s authority under Government Code § 12838.4 and PC §§ 3052 and 5076.2. This regulation is adopted to implement, interpret, and make specific PC § 3000.1.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely on any technical, theoretical, or empirical studies in consideration of the proposed action.

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ALTERNATIVES TO THE REGULATION CONSIDERED BY THE AGENCY

The Board must determine that no reasonable alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action. While the Board also considered panels of one or two Deputy Commissioners, it determined that the gravity of the consequences of this hybrid parole revocation hearing were closer to a those of a life prisoner parole consideration hearing. Therefore, the Board elected to include two commissioners, one of which shall be a deputy commissioner.

ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The subject of this regulatory action has a direct effect on prisoners and parolees. Any impact on small business would be indirect and likely insignificant. The Board has not identified any alternatives that would lessen any adverse impact on small businesses.